* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.M.C 6191-94/2005**

**Reserved on 20th March, 2007**

**Delivered on 17th May, 2007**

RAMESHWAR & OTHERS ..... Petitioners

Through Mr. Sandeep Sethi, Sr. Advocate
Mr. Aly Mirza, Advocate, with him

Vsersus

STATE ..... Respondent

Through Mr. Pawan Sharma, Advocate for the State.
Mr. K.S. Pathania, Advocate for the complainant.

**CORAM:**
**Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

**Mr. Justice S. Ravindra Bhat:**

1. The petitioner has invoked the inherent jurisdiction of this Court for quashing of an order made by the Metropolitan Magistrate on 6.4.2005, and all further criminal proceedings.

2. Briefly the facts of the case are that the Respondent (hereinafter referred to as "complainant"), in a complaint under Section 190 Criminal Procedure Code

filed on 31.3.2005 alleged that the petitioner was guilty of having committed offences under Sections 420/467/468/471 & 501 read with 120-B/34 IPC. It was alleged that the complainant was dishonestly induced by the accused persons to deliver valuable goods namely, textile yarn. It was alleged that the accused had approached the complainant to deliver goods to M/s Fisba Enterprises Pvt. Ltd. alleged to be registered with Sales Tax Authorities. It was alleged by the complainant that the accused also held out that goods could be purchased without payment of tax, against ST-1 Forms. According to the complainant a copy of the registration certificate of Fisba Enterprises was handed over, to the latter. Apparently on the strength of the representations, goods were delivered and some payments were made.

3. In the course of the transactions Rs.14,15,000/- was paid through cheques but upon presentation, they were dishonoured. The complainant alleged that the petitioner induced him to present the cheques again; upon doing so they were dishonoured. The complaint further alleged that in spite of requests ST-1 Forms were not released and the Sales Tax Officer levied tax @ 4% on the goods supplied. It was also averred that during February/March, 2005 the registration certificate issued, was verified and found to be false; according to the allegation the sales tax authorities informed the complainant that no certificate evidencing

sales tax registration in favour of Fisba Enterprises was in existence. It was, therefore, alleged that the certificate was forged and used with dishonest intent, to induce the complainant to part with valuable property. The complainant further alleged that he was threatened and intimidated on 31.3.2005.

4. Upon receiving the complaint the Court directed it to be checked and registered. Counsel for the complainant was heard and the SHO, P.S. Defence Colony was directed to get the case registered and investigate the matter under Section 156(3) Cr.P.C; a further direction to file complaint registered on 31.5.2005 was made. On 7.12.2005 this Court while issuing notice, directed the stay of further orders of the Magistrate even while granting liberty to act upon the FIR lodged by the police.

5. Mr. Sandeep Sethi, learned senior counsel urged that the complaint is an abuse of process of Court and should be quashed in exercise of the powers of the Court under Section 482 Cr.P.C. It was urged that the complainant intentionally and with malice chose to approach the Court under Section 156(3) even though, in respect of several cheques which are the bone of contention, he instituted separate complaint proceedings on allegations of commission of offences under Section 138/14 Cr.P.C. It was urged that the complainant, Surinder Patwa impleaded M/s

Fisba Enterprises Pvt. Ltd. as well as the present petitioners, the Directors in each of those proceedings concerning the 16 cheques in dispute. In these circumstances, the filing of an application under Section 156 and issuance of the impugned order amounted to multiplicity of proceedings and harassment.

6. Counsel contended that what is essentially a civil dispute is sought to be imparted cloak of a criminal offence which cannot be countenanced. He placed reliance upon the judgment of the Supreme Court in *G.Sagar Suri Vs. State of U.P.* 2000 (2) SCC 636 as well as similar judgments. Learned counsel relied upon copies of several documents said to be invoices, raised upon M/s Fisba Enterprises to state that sales-tax in fact had been collected and, therefore, the allegations levelled were completely unfounded; no loss much less wrongful loss to the tune of Rs.79,44,230.26 as alleged in the complaint aver arose. Counsel submitted that on these grounds the Court ought to invoke its inherent jurisdiction to further the ends of justice and quash the impugned order as well as First Information Report (FIR) lodged on 7.4.2005.

7. Learned counsel for the respondents opposed the petition and submitted that the petitioner has no *locus standi* to question the impugned order since in the absence of an order issuing process, or taking cognizance of the offence, the Court has been virtually called upon to interdict and stall the investigation process, thus

hampering the machinery provided under Criminal Procedure Code.

8. Learned counsel urged that the power under Section 482 to quash criminal proceedings cannot be resorted to specially when the allegations such as cheating, intimidation and forgery are made, without allowing the police authorities to carry out investigation in accordance with law. Counsel submitted that the principles governing exercise of exceptional jurisdiction under Section 482 are well established; it can be resorted when taken as a whole, the complaint/FIR does not disclose a cognizable offence; when the complaint/FIR is motivated by malice and where the Court is of the opinion that the allegations are so absurd or unreasonable that the alleged offence could not have occurred.

9. The above factual matrix would show that the petitioner purports to be aggrieved by an order under Section 156(3) and the subsequent follow up action taken by the police, in lodging the FIR. The complaint lodged by the respondents is clear - it levels some serious allegations concerning the petitioners conduct, in dishonestly inducing him to supply goods, and later not making payments; there are also allegations of using forged documents such as fabricated as well as tax registration certificate. *Prima facie*, the contents of the complaint, a copy of which has been produced and is a part of the present record, disclose the allegations which point to ingredients of the offences mentioned.

10. It has been often held by the Supreme Court in judgments (Refer: *T. Vengama Naidu Vs. T. Doraswamy Naidu*) (Crl.No.274/2007 decided on 27.2.2007) that the High Court should not, at the stage of investigation examine the nature of transaction to scrutinize as to whether any offence is actually made against accused persons. The only scope of judicial scrutiny, possible at that stage is to see whether the complaint or FIR contained allegations of any offence. (Ref: *State of Karnataka Vs. Pastor P. Raju* 2006(3) JCC 1398) A Division Bench of this Court in *Daulat Radhu Bhatija Vs. State* 1994(2) CCC 433 held that an order under Section 156(3) directing investigation and filing of a status report does not amount to taking cognizance and that even a direction to register a case, though seemingly irregular, is of no consequence, and cannot be held to be illegal.

11. As mentioned in the preceding part of this order, three distinct allegations about dishonest inducement to part with goods on the strength of existence of sales tax certificate and there being no need to pay sales tax; the withholding of monies due and use of alleged fabricated documents point to ingredients of the offences. Therefore, the Court cannot conclude that there are no allegations. The Court has not even considered the investigation by the police. Having regard to the nature of the allegations, and the scope of this proceeding, this is neither an appropriate nor a proper case where invocation of inherent jurisdiction is called for. This view is also strengthened by the order of this Court on 22.8.2005 when writ petitions (Crl.)

No.1281 -1285/2005, in respect of the First Information Report were dismissed.

12. In view of the above conclusions and after having considered all the materials on record, I am satisfied that no case for quashing the order of the trial court, or the complaint has been made out. The petition, therefore, fails and is hereby dismissed without any order as to costs.

**S.RAVINDRA BHAT, J**

**MAY 17, 2007**